

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Ole Savior,

Complainant,

ORDER OF DISMISSAL

v.

Cam Winton and Winton for Mayor,

Respondents.

On September 4, 2013, Ole Savior filed a Campaign Complaint with the Office of Administrative Hearings alleging that Cam Winton and his campaign committee, Winton for Mayor, violated Minn. Stat. §§ 211B.06 and 211B.07 in connection with Mr. Winton's 2013 Minneapolis mayoral campaign. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on September 4, 2013, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondents on September 5, 2013.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state *prima facie* violations of Minn. Stat. §§ 211B.06 and 211B.07. Therefore, the Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS HEREBY ORDERED:

That the Complaint filed by Ole Savior against Cam Winton and Winton for Mayor is **DISMISSED**.

Dated: September 9, 2013

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

The Complainant, Ole Savior, is one of 35 candidates running for mayor of Minneapolis in the November 2013 general election. Mr. Savior is running as a Republican candidate. Mr. Savior filed this campaign complaint against Cam Winton, another mayoral candidate, and Mr. Winton's campaign committee. Mr. Winton is running as an Independent candidate.

The Complaint alleges that Mr. Winton and his campaign committee violated Minn. Stat. §§ 211B.06 (false campaign material) and 211B.07 (undue influence) when they failed to have a booth at the Minnesota State Fair as advertised. According to the Complaint, an information sheet was handed out at the State Fair by State Fair staff that listed all the candidates and political parties with booths at the fairgrounds. The sheet included Mr. Winton and his campaign committee, along with 17 other candidates or political organizations. The sheet, entitled "Politics 2013," listed Mr. Winton and his committee as having a booth located on the fairgrounds at "Cooper between Wright and Dan Patch." The Complaint asserts that the Respondents were "no shows" at the State Fair and claims that their failure to have a booth at the Fair as advertised amounted to fraudulent and deceitful conduct in violation of section 211B.06. The Complaint alleges further that the listing of Mr. Winton's name on the "Politics 2013" sheet resulted in free advertising for candidate Winton and violated the prohibition against "undue influence" under section 211B.07. In addition, the Complaint alleges that Mr. Winton claims to be an Independent, a Republican and a Libertarian. Finally, the Complaint states that on August 5, 2013, Mr. Winton called the Complainant at home and requested that the Complainant change the party affiliation he listed on his Affidavit of Candidacy to something other than Republican.

Minnesota Statutes § 211B.06 - False Campaign Material

Minnesota Statutes § 211B.06, subdivision 1, prohibits intentional participation:

[i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

In order to be found to have violated this section, a person must intentionally participate in the preparation or dissemination of campaign material that the person

knows is false or communicates with reckless disregard of whether it is false.¹ As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of specific facts.² Campaign material is “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”³

To allege a *prima facie* violation of Minn. Stat. § 211B.06, the Complainant must put forward facts that would support a finding that the Respondents knowingly, or with reckless disregard, disseminated false statements of specific facts concerning the personal or political character or acts of a candidate that were designed to elect or defeat a candidate. Here, the Complainant seems to allege that the list identifying the location of Mr. Winton’s booth at the State Fair was false campaign material because Mr. Winton did not in fact have a booth on the fairgrounds.

This allegation fails for several reasons. First, the Complaint does not allege that the “Politics 2013” list of candidate and political party State Fair booths was prepared or disseminated by Mr. Winton or his campaign committee. Instead, the Complainant indicates that the list was prepared by Minnesota State Fair staff who handed out copies of the list to fairgoers free of charge. In addition, the Complainant fails to allege that the Respondents knowingly, or with reckless disregard, falsely stated that they would have a booth on Cooper Street between Wright and Dan Patch at the State Fair. Moreover, a list of political booth locations, even if inaccurate, does not concern the “personal or political acts of a candidate.” Nor can a list of 18 candidates and political organizations at the State Fair be considered campaign material designed to elect a particular candidate.

The Complainant also alleges that Mr. Winton claims to be an “Independent, Republican and Libertarian,” and asserts that Mr. Winton claims multiple party affiliations ultimately to get more votes.⁴ The Complaint includes a piece of campaign literature promoting Mr. Winton’s candidacy that includes the following statement: “Fresh eyes for City Hall – an independent candidate for mayor.”⁵

Although it is not clear from reading the Complaint, it appears that the Complainant is maintaining that Mr. Winton’s alleged multiple party affiliation claims violate Minn. Stat. § 211B.06. The Complainant does not specify whether these claims, if they occurred, were disseminated by way of campaign material. The prohibition against false campaign material in Minn. Stat. § 211B.06 is limited to certain written

¹ See, *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); see also, *Riley v. Jankowski*, 713 N.W.2d 379, 398-99 (Minn. App. 2006).

² See, *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

³ Minn. Stat. § 211B.01, subd. 2.

⁴ Complaint (September 4, 2013) at pp. 5-6.

⁵ See, Attachment to Complaint.

material and excludes oral statements.⁶ Therefore, the only evidence submitted by the Complainant to support this allegation is the one piece of campaign material describing Mr. Winton as “an independent candidate for mayor.” This statement, however, is merely descriptive and an expression of opinion suggesting that Mr. Winton is objective and unbiased. It is not a statement that is capable of being proven true or false. As such it cannot form the basis of a section 211B.06 claim.⁷

For all of these reasons, the Complaint fails to allege a *prima facie* violation of Minn. Stat. § 211B.06.

Minnesota Statutes § 211B.07 - Undue Influence

Minnesota Statutes § 211B.07 provides:

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

In order to allege a *prima facie* violation of Minn. Stat. § 211B.07, the Complainant must put forward facts that would support finding the Respondent used or threatened force, coercion, violence, harm etc. to “compel” a person to vote for him or another candidate. The Merriam Webster Dictionary defines “compel” to mean “to drive or urge forcefully or irresistibly;” or “to cause to do or occur by overwhelming pressure.”⁸

The Complainant has failed to allege any facts to support finding that the Respondents violated Minn. Stat. § 211B.07. The Complainant alleges that the Respondents failed to have a booth as advertised at the Minnesota State Fair. This allegation is insufficient to support a *prima facie* violation of Minn. Stat. § 211B.07.

Likewise, the allegation that Mr. Winton called the Complainant and asked him to change the Republican party affiliation he listed on his Affidavit of Candidacy, even if true, is not enough to support a *prima facie* violation of Minn. Stat. § 211B.07. The

⁶ See, *Stegner v. Smith*, 2008 WL 2967011 at *4 (Minn. Ct. App.) (concluding that oral statements do not constitute “campaign material” within the meaning of § 211B.01); *Stegner v. Smith, et al*, OAH Docket No. 11-6381-19135-CV (2007); *Koalska v. Juneau*, OAH Docket No. 7-6312-16225-CV (2004).

⁷ *Fine v. Bernstein*, 726 N.W.2d 137,144 (Minn. Ct. App. 2007). See also, *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. Ct. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974) (Expressions of opinion, rhetoric, and figurative language are generally protected speech, if, in context, the reader would understand that the statement is not a representation of fact). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. Ct. App. 1996).

⁸ “Compel.” *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 9 Sept. 2013.

statute is directed against the use or threatened use of force, coercion, violence, harm, economic reprisal, etc., in order to compel an individual “to vote for or against a candidate or ballot question.” The Complainant has failed to allege any facts that would support a claim that the Respondents used or threatened to use undue influence to compel him to vote in a particular manner. This allegation is dismissed.

Because the Complaint fails to allege *prima facie* violations of Minn. Stat. §§ 211B.06 and 211B.07, it is dismissed in its entirety.

J. E. L.